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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Note verbale dated 10 February 1994 from the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

The Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office and other International Organizations in Geneva presents its compliments to the Chairman of the United Nations Commission on Human Rights and, with reference to its previous note No.1128/1 of 24 December 1993, has the honour to enclose herewith, once again, a document prepared by the Government of the Federal Republic of Yugoslavia entitled "Comments by the Government of FR Yugoslavia on the fifth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993 (E/CN.4/1994/47 of 17 November 1993)" with the request that it be circulated as an official document of the fiftieth session of the United Nations Commission on Human Rights under agenda item 12.

FEDERAL REPUBLIC OF YUGOSLAVIA
FEDERAL GOVERNMENT

COMMENTS BY THE GOVERNMENT OF FR YUGOSLAVIA ON THE FIFTH PERIODIC REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA SUBMITTED BY MR. TADEUSZ MAZOWIECKI, SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS PURSUANT TO PARAGRAPH 32 OF COMMISSION RESOLUTION 1993/7 OF 23 FEBRUARY 1993

(E/CN/4/1994/47 of 17 November 1993)

February 1994

INTRODUCTION:

These Comments have been prepared on the basis of the Report by the UN Special Human Rights Rapporteur for the territory of the former Yugoslavia, T. Mazowiecki, of 17 November 1993 (E/CN/4/1994/47), as well as reports by lawyers, victims, "human rights organizations" in Belgrade, in Kosovo and Metohija and the Raška region, by the so-called independent Yugoslav press (mostly "Vreme" and "Borba"), on the basis of reports by independent rapporteur S. Grant (who visited FRY as a member of T. Mazowiecki's Special Mission), which have all been referred to by T. Mazowiecki in different parts of his Report.

GENERAL OBSERVATIONS

1. We note certain positive changes in the approach to the preparation of the Report and to the method of addressing the situation of human rights in the territory of the former Yugoslavia, as well as a higher degree of objectivity in certain chapters of the Report (particularly in the part dealing with the Federal Republic of Yugoslavia).

2. We are glad and we welcome the fact that the mission of independent expert S. Grant was able, during their visit to FRY and on the basis of personal insight gained, to communicate to Mr. T. Mazowiecki, relevant clarifications of a legal nature which contribute to a more objective overview of the situation of human rights in FRY without unnecessary politicization. We further hold that such an expert approach, rather than any politicized approaches, should be upheld. Nevertheless, the Report abounds in inaccuracies which we shall refer to in our more specific remarks.

3. It is not necessary to repeat in every new report of Mr. Mazowiecki's parts of earlier, outdated, insufficiently objective or unsubstantiated allegations, which have been the subject of our previous critical remarks. Every new report should remove the deficiencies identified in the previous ones and be primarily based on facts rather than data obtained at second or third hand.

4. Many conclusions in the Report are, obviously, drawn from politically biased testimonies of opposition parties or individuals (indirect reports) without any reference to concrete evidence or documents to justify them. This is why they are insufficiently plausible and their prime aim is obviously to discredit the current regime in Serbia and FR Yugoslavia.

SPECIFIC REMARKS

a) Republic of Serbia:

aa) Cases of use of brutal or excessive force:

5. With reference to the statements by the Special Rapporteur on the use of force and overstepping of powers by the police (paras. 166, 167, 168), we wish to point out that they refer to incidents of a kind which this state is bound to react to and which it seeks to prevent. This is best illustrated by the fact that in the territory of Serbia in 1992, on charges of the criminal offense of abuse of office in the line of duty (under Art. 66, the Criminal Code of the Republic of Serbia and other relevant Articles) complaints were filed against 192 persons, of which 47 were charged and 27 convicted; for the criminal offense of extortion of testimony (Art. 65, Criminal Code of the Republic of Serbia and other relevant Articles), of 19 complaints filed, 15 persons were charged and 9 convicted, and for the criminal offense of unlawful detention (Art. 63 of the Criminal Code of the Republic of Serbia and other relevant Articles), 589 complaints were filed, of which 35 persons were charged and 16 were convicted.[1]

6. According to the report of the Ministry of Justice of the Republic of Serbia, in 1993 charges were brought against 87 persons for the criminal offense of abuse of office and for the criminal offense of extortion of testimony 8 persons, but the official statistics for that year have not been completed yet.

7. Consequently, the statement in para 168 of the Report, that responsible police officers are prosecuted only in exceptional cases and that this course of action was taken in the case of Nadečda Bulatović solely due to the media attention it had attracted, is untrue. In connection with the latter case, the relevant criminal proceedings are still underway (the expertise stage at the Forensic Medicine Institute). Police officers C.S. and B.S. have been charged with abuse of office in the line of duty under Art. 66 of the Criminal Code of the Republic of Serbia and more specifically for infliction of light bodily injury under Art. 54, para 2, of the same Law.

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1 See the Bulletin of the Federal Statistical Office, 1992

8. We also wish to point out that disciplinary action is regularly taken against all police officers who have violated the law-enforcement regulations, that all of them are suspended and, where necessary, given a disciplinary sentence (dismissal being the most stringent).

9. As for Vuk and Danica Drašković, it is our view that the case was closed by the President of the Republic of Serbia who granted abolition. Vuk Drašković stood accused of the criminal offense of participation in the activities of a violent group as the ringleader (under Art. 230 para 2 of the Criminal Code of the Republic of Serbia). Danica Drašković was charged with the same offense (Belgrade District Court, case K. 361/93). The charge against Vuk Drašković for assaulting a police officer on duty and inflicting grave bodily injury (Kt No. 707/93, dated 6 October 1993) was subsequently dropped. We wish to stress that the abolition was granted at the indictment stage.

10. With regard to the Special Rapporteur's reference to police detention, i.e. that the police may both order detention and take into custody a person without court supervision, it is correct that this kind of detention does exist and it may last up to three days. (In principle, detention is ordered by the examining judge for a period not longer than 3 months following the latter's decision to that effect, or 6 months following a decision on extension made by a Counsel of three judges of the first-instance court of law.) But, as indicated in the Special Rapporteur's report, police detention runs counter to the latest constitutional provisions (Art. 24, para 1 of the FRY Constitution) and the harmonization of the relevant provisions of the Criminal Procedure Code with the Constitution is pending.

11. We wish to mention that, even though we consider the revocation of this measure to be fully justified, police custody is something that many countries are refusing to abandon.[1]

12. As for the right to defense, we wish to stress that the abolition of police detention eliminates any existing limitations regarding legal access already at the first hearing. With the abolition of this kind of detention, the police will be under the obligation to hand the suspected person immediately over to the examining judge.

Namely, under the FRY Constitution, citizens may be detained only subject to a competent court decision and only if that is required for the conduct of criminal proceedings. It is therefore no longer possible, as was the case under the Constitution of the former SFRY, for the police authorities to decide on detention, as now they are only empowered to place citizens under arrest under specific conditions specified by law and to hand them over immediately to the examining judge. Detention can likewise no longer be ordered on account of such abstract considerations as "safety reasons", including maintenance of public law and order, prevention of disturbance of citizens, etc. Detention, i.e. holding of any defendant in custody can no longer be ordered in the case of minor offences because this is not permitted under the new Constitution which stipulates explicitly that detention shall be warranted only for the conduct of criminal proceedings.

Bearing in mind the above constitutional provisions, the competent Federal Government agencies are preparing the harmonization of the legislation in force with the FRY Constitution, i.e. a revision of the Law on Criminal Proceedings which regulates this matter.

13. With regard to the provision prohibiting violent or degrading treatment, torture and punishment of detainees, which has so far been treated as a principle of criminal proceedings, it has now been raised to the level of a constitutional principle enshrined in the new FRY Constitution (Art. 25).

14. Yugoslavia ratified in 1991 the Convention against Torture and Other Forms of Inhuman and Degrading Punishment or Treatment so that, Yugoslav citizens, having made recourse to internal legal remedies, can apply for protection also to the Committee against Torture.

14a. On the statement in para 188 of the Fifth Periodic Report which refers to the problem of judges of Albanian nationality in Kosovo, we wish to point to the fact that the National Assembly of the Republic of Serbia has appointed 48 judges and 10 public prosecutors of Albanian nationality, of which 28 judges and 3 public prosecutors refused to take an oath before the National Assembly of the Republic of Serbia.

ab) Freedom of assembly and association

15. It is unacceptable to treat the truly undesirable and most regrettable incident in the Parliament, referred to in para 173 of the Report, as a justification for public demonstrations organized by the opposition party - the Serbian Renewal Movement (SPO) of which the authorities had not been notified nor had they given their approval and in which, as specified in the Report, one police officer was killed and 32 persons injured, and heavy damage inflicted on the Parliament building and the buildings in the nearby streets of Belgrade. In all democratic countries demonstrations without prior notification of the authorities and their approval are treated as illegal and are prevented and any assaults on public or personal property as a serious criminal offense and are prevented by the police by force.

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1 See Report UE/CN. SUB 2 1993/24 Add 2

16. The demand by the Public Prosecutor of the Republic of Serbia addressed to the Constitutional Court of Serbia for the Serbian Renewal Movement (SPO) to be banned referred to in para 172 of the Report was based on the breach of the legal provision mandating notification and approval of public demonstrations, which was not observed by this party, and the incident in the course of those demonstrations mentioned in the previous paragraph, which caused human casualties and heavy material damage. Indeed, the Public Prosecutor's demand was not answered so that SPO continued to participate in public life and also took part in the elections, which testifies to the regularity of operations and democratic nature of the process of decision-making by the Constitutional Court of Serbia.

ac) Freedom of expression and the media:

17. The part of the Report covering this area was compiled in a way as to overexaggerate its importance and, by referring to insufficiently documented examples, to lead up to the unwarranted conclusion on the alleged stifling of the freedom of the press and expression in Serbia and FRY, despite the obvious democratization of the media space and the absence of any media censorship.

18. With reference to para 176 of the Report, we wish to mention that at the beginning of 1993, Radio-Television Serbia had 7,500 employees, which is far beyond the means of much more developed countries and TV broadcasting companies, and therefore, for economic reasons, like other similar institutions worldwide, they had to cut down their work force. In line with the adopted policy of no dismissals while the sanctions remain in force, the employees of RTS were sent on "enforced holidays", a solution resorted to also by other firms and institutions in FRY due to the devastating impact of the UN Security Council sanctions. Reference to the two specific cases does not prove by any means that any "political selection" criteria were applied in selecting employees who would be sent on "enforced holidays". Those employees, in any case, can resort to legal remedies to realize their rights stemming from employment.

The assessments made by the President of the opposition Serbian Radical Party, V. Šešelj, testify precisely to the freedom of expression, and, to include them in the Report among the alleged causes for "enforced holidays" is strange and unwarranted.

19. On para 177, we wish to point out that Article 32 of the Law on Public Information, provides for the possibility of filing a complaint against an Editor-in-Chief for failing to make a public correction of any false allegation which infringes on a person's right or interests or fails to make such correction public in the manner and within the time-limit specified by law. The Ministry of Information of Serbia has no information on any such complaint having been filed with the competent courts.

20. We are not familiar with the complete findings of the research on the media of the Anti-War Centre of Belgrade (para 178 of the Report). The question of the "expression and dissemination of inter-ethnic hatred" in a situation when a civil war rages in the immediate neighbourhood of Serbia and the Federal Republic of Yugoslavia and when the very existence of the Serb nation as a whole is in jeopardy, certainly requires a more thorough in-depth social and psychological analysis. Unfortunately, no-one, neither the mentioned Centre nor the Special Rapporteur in his Report, has analytically investigated the instigation of inter-ethnic hatred and anti-Serb feelings in the media of the former Yugoslav republics. An investigation is also called for into the behaviour of a large number of Western media which have demonized the Serb people as such and proclaimed them responsible for the overall crisis in the Yugoslav lands using the worst possible language to describe them without even giving them a chance to deny and disprove the allegations made against them.

Hatred for the Serbs which only heightens intolerance and encourages inter-ethnic conflicts has been overtly and persistently expressed by the media published in the Albanian language in Kosovo and Metohija, by some media published in Hungarian in Vojvodina and by a segment of the media in the Raška region. These facts unfortunately, are not reflected in the Report of Mr. Mazowiecki.

21. The competent authorities in Serbia have not banned the publication or distribution of a single newspaper (para 179 of the Report) since the Law on Public Information was passed in March 1991. The mentioned Mr. Harun Hadžić violated the Constitution and the Law by publishing in the journal "Sandčak" an overt call for secession of this part of Serbia and its unification with the former Bosnia-Herzegovina. The charges brought against him are based on this incriminated anti-constitutional activity.

22. The "Reljić case" (para 180 of the Report) was promptly and publicly denounced by the Ministry of Information of the Republic of Serbia as well as by a number of other competent institutions and individuals. Mr. Reljić has since found a new job as a journalist abroad.

23. With respect to citizenship, we believe that following the disintegration of SFR Yugoslavia problems in this area were only to be expected. For, as correctly stated in the Report, in the Socialist Federal Republic of Yugoslavia there was, conditionally speaking, federal citizenship as the primary form and republican or, again conditionally speaking, secondary citizenship. It is only logical therefore

that with the break-up of SFRY, the problem emerged of, for instance, people in the territory of the Republic of Serbia who, in addition to federal citizenship, also held the citizenship of one of the other former Yugoslav republics.

24. However, absolutely no comparison can be made in this respect with the situation in Croatia where this republican citizenship was used as an excuse for the persecution of non-Croats and to a an extent that can only be described as racist.

25. In the case of the Republic of Serbia, this was not the case. All persons regardless of nationality who were residents of Serbia (this being virtually the only and the main condition) in principle, were granted citizenship.

ad) The situation of refugees:

26. The position of persons with refugee status many of whom would like to acquire citizenship of the Republic of Serbia is another matter. From the standpoint of human rights, there is no problem. We should like to point out that a new Law on Citizenship is being drafted in Serbia and it will regulate this and many other matters in this area in conformity with the relevant international standards.

27. Also, on the question of refugees and the comments of the Special Rapporteur concerning the possibility of refugee status being revoked if a person refuses to perform military duties, we should like to note that amendments are being prepared to the Law on Refugees which will provide for the deletion of the provision linking refugee status to military service.

b) The situation in the Autonomous Province of Kosovo and Metohija:

28. The whole problem of the status of Kosovo and Metohija and, in that connection, the question of human rights of the Albanian national minority in this autonomous province of the Republic of Serbia, must be addressed from the standpoint of the province's constitutional position as a part of the Republic of Serbia and of the Federal Republic of Yugoslavia with all the rights and political consequences this implies.

29. Human rights and freedoms of the Albanian national minority in Kosovo and Metohija are guaranteed by the Constitutions of Serbia and FRY as inalienable rights of members of national minorities (in Serbia and FRY there are a number of other national minorities whose status has been regulated and whose human rights have been guaranteed in the same way). Vast efforts are being invested (in organizational, administrative, financial and other terms) to ensure their full implementation and steady advancement. However, all such efforts are in vain in the case when a minority or its leading political organization does not recognize the situation it is living in nor the laws of that state.

30. The clandestine activities of Albanian separatists with a view to proclaiming a would-be Republic of Kosovo, its separation from Serbia and FRY and its annexation to neighbouring Albania can only be treated as any such activity is treated by international law - as illegal activity against the sovereignty and territorial integrity of the state in which the minority resides, as extreme disloyalty towards one's own state and as violation of its positive legislation. Such a political orientation of the separatists among the Albanian national minority should have surely been mentioned and condemned in the Report of Mr. T. Mazowiecki.

31. In this connection it is unacceptable to treat flagrant non-respect of the Constitution and the internal legislation of Serbia and the Federal Republic of Yugoslavia by members of the Albanian national minority organizations and individuals (on the basis of their distorted logic) as refusal to "give recognition to what they see as an illegal Serb regime" as stated in para 188 of Mr. T. Mazowiecki's Report.

32. An illegal parastatal formation known as "The Republic of Kosovo" is active in Kosovo and Metohija and is trying to build up a complete parallel state apparatus and administrative structure starting from the head of state, the prime minister and ministers of various departments through to the organization of a parallel system of education, health care, etc.

33. Refusing to accept the new concept of state authority as inaugurated by the April 1990 Constitution of the Republic of Serbia and seeking to maintain the state structure as stipulated by the 1974 SFRY Constitution[1], as an obvious step towards secessionism, the secessionist organizations and their leaders adopted the so called "Constitution of Kačanik" (August 1990), and held a referendum

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1 The 1974 Constitution gave the Autonomous Provinces almost all the prerogatives of states. Autonomous Provinces, thus had the right almost fully to exercise legal, judicial and executive powers except some state security, defense and monetary system affairs. The 1990 Constitution of Serbia only established mechanisms for exercising sovereign power on its entire territory, including the Autonomous Province of Kosovo and Metohija with the full recognition of the right of national minorities to express their national identity, ethnic, cultural and linguistic specificities (Article 108 of the Constitution of Serbia and Article 11 of the Constitution of FR Yugoslavia).

on secession among the ethnic Albanians of Kosovo (September 1991) their aim being to form a parallel system of authority.

34. Such a situation in itself has provoked a two-dimensional social pathology. On the one hand, a marked increase in trafficking of arms, drugs, gold, etc. to secure financial resources for the functioning of para-statal institutions, a parallel educational system, etc. and, on the other, as the very functioning of para-statal authorities is not only anti-Constitutional, but it necessarily involves numerous terrorist actions and attacks on the territorial integrity and sovereignty of Yugoslavia.

35. Of late, particularly active has been the Ministry of Defense of the "Republic of Kosovo" as it calls itself, and according to information collected so far it has already prepared war plans, the organizational structure of military units, complete with most of the commanding personnel, it keeps records of conscripts, it has made arrangements for the procurement of weapons and materiel from abroad, it organizes military training, etc. These activities are behind the numerous arrests made in September and October 1993 (which para 190 of the Report probably refers to) on charges of the criminal offense of preparing armed rebellion under the leadership of Hajzer Hajzeraj, the would-be Minister of Defense and Ejub Dragaj, his would-be Deputy.

36. The police forces have also been very active, their task being to bring pressure to bear on the population and to keep them under control and to prevent any contact of members of the Albanian national minority with the legal organs of authority.[1] Thus, for instance an organization called the "Federation of Independent Trade Unions" operates as a "racket" imposing a 30% charge on all earnings of the Albanians, payable in kind or in money. There are many other organizations and parties (e.g. the Ballista Party, known as the "Movement for the Liberation of Kosovo") whose members were in convicted in September 1993 by the District Court in Gnjilane for the criminal act of association for the purpose of violating territorial integrity.

37. In order to ensure their sovereign authority on their entire territory, FR Yugoslavia and the Republic of Serbia are resolutely engaged in efforts to suppress such activities.

ba) Education

38. The very existence of a "parallel" system of education mentioned in paras. 200 and 201 of the Report is illegal and contrary to the law according to the existing legal and educational system in Serbia and FRY, and would be treated as such in any other country in the world.

The competent organs in the Ministries of Serbia and FRY have persistently sought by various means to put an end to this illegal and subversive action, inspired by separatists, on the part of some teachers and pupils - members of the Albanian national minority. However, all their attempts failed on account of the open refusal of members of the Albanian national minority to apply in public schools the common state laws (which all national minorities in the world are obliged to respect) including common curricula and programmes. The numerous foreign missions that visited Kosovo and Metohija in this connection could assure themselves of this on the spot.

The beginning of such drastic ignoring and violation of the laws of FRY on the part of the Albanian national minority dates back to September 1, 1992 when the non-existent and illegal "Republic of Kosovo" was proclaimed and the teachers and members of the Albanian national minority and their political representatives decided to implement "their own plans and programmes" in public schools. Such behaviour, in contravention of the law, would certainly not be tolerated by any country in the world. It is unreasonable to censure Serbia and FRY for not allowing such illegal activities in the educational system and state schools, which they finance, for not recognizing the acquired "parallel" diplomas, etc.

This is, clearly, not a question of the members of the Albanian national minority being threatened, but rather a classical example of the denial and threats the sovereignty of the state in the area of education and its bringing in question in other areas as well.

39. The claim made in para 203 of the Report on the arrest of the alleged "former" Rector of the University of Priština, professor Ejub Statovci, because of a letter to the current Rector asking that the University buildings, which were taken by force, be returned to students and teaching staff of the Albanian national minority, is not true. First, because Ejub Statovci never was the legal Rector of the University but only falsely claimed the title. No parallel University in Priština exists or is known. Until members of the Albanian national minority left the state University in Priština, the Rector was Dr. Skender Karahoda, who is of the same nationality as Ejub Statovci. That is why Statovci's demand for the "return of the University buildings" was in fact an illegal and punishable invitation for disturbance of the public law and order, an invitation to conflicts and opposition to the regulations of one's own country, with

1 See the Report of the "Movement for Joint Life" of November 14, 1993 sent to the Federal Ministry for Human and Minority Rights of the Government of FR Yugoslavia.

possible grave consequences. This was the basis for initiating proceedings against the self - styled Rector Ejub Statovci.

40. A comparative approach would show that the University of Priština is one of the rare Universities in Europe at which members of a national minority (the Albanians) can study in their own mother tongue and this should have been stated in the Report. Such institutions, regrettably, do not exist for members of the Serbian minority in Albania, Hungary or Romania, nor for members of other national minorities in Western Europe. Besides, in addition to members of the Albanian national minority, there are also Serbs, Moslems, Montenegrins, Turks and others studying at this University.

This, however, does not satisfy the separatist leaders of the Albanian minority. They would like to appropriate this University and integrate it into the educational system and adjust curricula with those of a neighbouring country - Albania.

41. The University in Priština, and this should have been emphasized in the Report, is one of the six state Universities in the Republic of Serbia and the same laws of this Republic must apply to it as to the rest. The teaching and scientific work is financed by the state, the state determines the curricula and development, the admission quotas by groups and faculties, etc. When the boycott of the University by members of the Albanian national minority began, there were some 2,000 places for studies in the Albanian language were left unfilled. Therefore, the boycott of this University by Albanian students and staff is evidently politically motivated with the intention to deny the competences of the Republic of Serbia in one of its parts and to bring in question the constitutional position of the Province of Kosovo and Metohija - something that would not be tolerated anywhere in the world.

42. Despite the fact that the Republic of Serbia, in the framework of the Geneva negotiations, demonstrated its readiness to accept the curricula and the programmes which had existed before 1990, i.e. which were drawn up by the then Provincial Council for Education in 1985 and not by the Educational Council of Serbia -against which members of the Albanian national minority had protested in particular - to agree to the return of all teachers to work, except those who had flagrantly violated the Yugoslav legal system, to recognize the completed period of studies within the "parallel system", the other side i.e the Albanian national minority rejected the offer. We should like to underline that the system of organization of the educational process and of the preparation of curricula and programmes by the Republican Council of Education of Serbia has been endorsed by all the other national minorities in the Republic of Serbia.

43. With regard to the curricula and programmes which were taught in schools with instruction in the Albanian language in the past and, especially those within the "parallel educational system", it should be noted that they were never designed to assert and promote tolerant inter-ethnic relations, but rather in different ways induced hatred for the Serbs and were the main generators of the conviction that mutual life was impossible (e.g. among the 216 writers studied within the subject of the mother tongue, not a single one was of Serb nationality; children were taught that the capital of the state in which they lived was Tirana; medieval Serbia did not exist at all in the curriculum of general history).

bb) Use of language

44. With regard to the use of the language and script, bearing in mind the set of constitutional and legal arrangements (Law on the Official Use of Language and Script, "Official Gazette of the Republic of Serbia", No. 45/91), we believe that this issue can be said to have been settled in accordance with the existing international standards in this field.[1] Thus national minorities are entitled to the following:

- education in the mother tongue starting from elementary to post-graduate levels (Law on Elementary Education, "Official Gazette of the Republic of Serbia" No. 50/92, Law on Secondary Schools, "Official Gazette of the Republic of Serbia" No. 70/92 and the Law on the University, "Official Gazette of the Republic of Serbia", No. 74/92);

- the right to the conduct of criminal and other proceedings deciding the rights and obligations of a person in his mother tongue (Article 49 of the Constitution of FR Yugoslavia);

- the right of a detainee to be informed of the reasons for detention, i.e. from the first moment of detention, in his mother tongue (new constitutional right guaranteed by Article 23, para 3, of the Constitution of FR Yugoslavia);

- the right to public information in the mother tongue (there are numerous dailies and weeklies, radio and TV programmes, theater performances, etc. in the Albanian language);

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1 See the Covenants on Civil Rights, the Optional Protocol on Minority Rights to the European Convention on the Protection of Freedoms and Rights, the UN Declaration on the Rights of Members of National, Ethnic, Religious and Linguistic Minorities and the European Charter on Regional Languages or Languages of Minorities

- the possibility to display toponyms, geographic names, names of streets, squares, etc.[1], in the language of the national minority;

- the possibility of forms for personal documents and public records for the needs of areas in which minority languages are in official use, to be published in two languages.

In other words, we should like to point out that certain deficiencies that occur in practice in this respect in Kosovo and Metohija and which have been observed by the Special Rapporteur are not attributable to official state policy, but are undesired deviations from that policy, which in part appear as a reaction to the rights formerly exercised by national minorities, whereby one of the basic European principles was violated, namely that the rights of national minorities may not be exercised at the expense of the majority population which constitutes a minority in a given territory.

As for the case of Adem Zairi, at the time this answer was prepared we have been informed that proceedings have been instituted against the responsible persons.

45. All this clearly shows that the Province of Kosovo and Metohija is undoubtedly one of the most neuralgic Yugoslav political issues, which can be solved only if members of the Albanian national minority and their political representatives unequivocally give up their secessionist aims, take part in the exercise of legal authority and accept solutions which will take account of the interests of both sides. We should like to point out that had members of the Albanian national minority accepted to participate in the elections, they would have had not only virtually an absolute majority in the Provincial Parliament, but also a significant number of deputies in the Republican (cca. 30) and Federal Assemblies, whereby they could have wielded considerable influence over political life in Serbia and FR Yugoslavia.

c. The situation in the Autonomous Province of Vojvodina

46. In constitutional and legal terms, AP Vojvodina has the same status as AP Kosovo and Metohija. The national structure of this Serbian province is even more diversified than that of AP Kosovo and Metohija. Members of over 20 national and ethnic groups, of which a considerable part have the same status of a national minority, as members of the Albanian national minority in Kosovo and Metohija, live in this Province.

The difference between the attitude of national minorities in AP Vojvodina and of the Albanian one in Kosovo and Metohija, vis-a-vis the state in which they live is drastic. The former recognize the Republic of Serbia as their homeland and exercise all the rights granted them as national minorities under the Constitution and the law.

47. As the Special Rapporteur himself was able to note, the Yugoslav authorities have done a great deal towards solving and putting an end to the case of "Hrtkovci", as well as that inter-ethnic tensions in the area of AP Vojvodina are generally abating.

48. With respect to this region, we should like to take this opportunity to underline that the large influx of refugees to this Serbian province, as one of the economically most attractive and most developed parts of the country, has not impaired inter-ethnic relations nor are there any tendencies endangering the national identity of national minorities. It is generally known that refugees are mainly housed with "host - families" and since most of them are of Serb nationality (80%) they are mostly accommodated in settlements with a majority Serb population so that no inter - ethnic problems could arise.

d) The situation in the Raška Region

49. The allegations contained in paras. 207 and 211 of the Report regarding 800 (Bukovica), or 3,000 persons respectively who have allegedly fled from the Raška region seem rather unreasonable. Not only is this number exaggerated, but the great majority of those who have left Raška did so due to economic reasons, while a large number - because of their participation in the civil war on the soil of the former Yugoslav republic of Bosnia-Herzegovina (it is a familiar fact that units of the Muslim army made up of "Sandčaklije" men from Sandčak, i.e. citizens of the FRY from the Raška region who are fighting for the interests proclaimed by Alija Izetbegović are the most murderous. In other words, only a smaller part of the people who have left the Raška region fall under the category of those who have done so due to impaired inter-ethnic relations.

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1 We should like to mention that "27. mart" is not the date of the adoption of the Serbian Constitution (September 28, 1990), but the date when in 1941 a putsch was carried out against the government of the Kingdom of Yugoslavia on the occasion of its accession to the Tripartite Pact (the Axis) and when in occupied Europe the citizens of Belgrade were the first publicly to raise their voice against fascism. As for changing the name of the "Prizren League", we should like to emphasize that this movement, initially formed as a movement for national liberation (1878) convened, during World War II, a gathering promoting the idea of a "Greater Albania".

Furthermore, we wish to point out that the Raška region used to be a peaceful, pastoral region and that excesses and somewhat deteriorated inter-ethnic relations are, above all the result of the extremely aggressive Muslim fundamentalism as well as the immediate vicinity of the brutal civil war raging virtually in the immediate neighbourhood.

50. As far as the regrettable events (described in paras. 208, 209 and 210) are concerned - the abductions in Sjeverin and Štrbci, it is a known fact that they were unequivocally condemned by the authorities and the public at large and the competent bodies have undertaken all available measures to elucidate these crimes (for example the arrest of Milan Lukiš and others in April 1993). However, the primary reason for the inadequate results so far is that most of the necessary investigations would have to be carried out on the territory of another state, i.e. outside the jurisdiction of the law-enforcement authorities of FR Yugoslavia.

e) The situation in the Republic of Montenegro

51. There is a contradiction in para 217 concerning the ratification of the International Covenant on Civil and Political Rights, whose Optional Protocol was proposed to the Assembly of Montenegro for ratification. The Report, namely, explains that the Assembly rejected the proposal on the ground that the ratification falls within the competence of the Assembly of the Federal Republic of Yugoslavia, of which Montenegro is a federal unit. In confirmation of the text, however, it is implied that the Assembly of the Republic of Montenegro could have ratified the Protocol under the provisions of Article 7 of the Federal Constitution, which provides for the possibility of the member Republics concluding international agreements.

We wish to stress the evident difference between the ratification of international treaties and covenants, that falls within the purview of the Federal Assembly, and the signing of international agreements that may be undertaken by the federal units. In other words, an absolutely unreasonable proposal is tendentiously supported on the basis of a totally incorrect interpretation of a constitutional provision.

52. With reference to the statements in para 218 of the Report by the Special Human Rights Rapporteur, we wish to note that Ms. S. Grant, Mr. T. Mazowiecki's associate, during her visit to Montenegro also evinced interest in the case referred to in this para. On that occasion Ms S. Grant was provided with detailed clarifications by the Minister of Justice in the Government of Montenegro and offered access to documents on the proceedings against the detainees concerned. All this appears not to have been taken into consideration in the Fifth Periodic Report on the Situation of Human Rights in the Territory of the Former Yugoslavia; instead, the allegations made therein relied primarily on the statements made by persons who were biased in their assessment of the event in question (notably, the defendants' defense counsels).

It is true, according to information obtained from the relevant departments of the Government of Montenegro, that a part of the audience reacted to the claim that Njegoš was a Serb poet, and this was reported by the mass media, but to challenge the fact that this very same part of the audience also insulted the President of the Republic of Montenegro who was attending the jubilee celebration at Cetinje, is, to put it mildly, in bad taste. Why this was done is quite clear so that no further elaboration is necessary in response to the statement that the President was "allegedly insulted".

The response of the Police and the scope of action taken on that occasion were commensurate with the number of perpetrators and the social threat posed by the criminal offenses committed. Whether restaurants and apartments were searched or not is totally irrelevant. For, perpetrators of criminal offences may be searched for anywhere and taken to the police station for questioning subject to certain limitations relating to immunity, disease, old age, etc. In this particular case, there was no reason to discontinue the search for the perpetrators of the mentioned criminal offenses which is fully in the line of duty of the police.

Without the slightest intention of contesting the statement that the protection of Montenegro's historical and cultural identity is a major issue among Montenegrins, there is every reason to ask who can believe that he can and may break the laws of the Republic of Montenegro and insult her President who was elected by the citizens at democratic, general and direct elections by secret ballot and, go unpunished while advocating the rule of law? In any case, the Ministry of the Interior of Montenegro filed charges with the competent Public Prosecutor precisely because the laws of this Republic had been violated.

By choosing to rely on data obtained from lawyers, and to treat them as indisputable, the UN Secretary-General's Special Rapporteur Tadeusz Mazowiecki has cast a shadow on his own objectivity as an observer.

53. In connection with para 219 of the Report, we wish to point out that following a legal review of the documents submitted and the registration procedure of public media, and having taken note of

the opinion of the Ministry of Industry, Energy and Mining No. 01-2871/1 of 29 July 1993 and No. 01-3327/1 of 3 September 1993, the Republican Secretariat for Information of the Government of Montenegro noted that conditions had been met for a decision to be issued on the entry of Montenegro public's "Radio-Antena M", Podgorica, in the public media register kept by this Secretariat for a limited time period specified in the work permit issued to the radio-station by the Federal Administration for Radio and Telecommunications.

However, the Secretariat was informed in the course of the registration procedure, that the Federal Administration for Radio and Telecommunications subsequently suspended the work permit of this radio station indicating it was not in line with the existing plans which regulate frequency allocations and their co-ordination.

54. On para 220 of the Report, we note Special Rapporteur T. Mazowiecki's objectivity in analysing the international legal protection of refugees in Montenegro. As for the requirement for refugees in Serbia to work, we see it in a different light. This is not a duty strictly speaking,but rather an opportunity provided to persons who have fled war-torn areas to secure for themselves better living conditions in cases where the Government is not in a position to do so in the face of wide-spread poverty brought about by international sanctions. This is but one of the options open to the refugees. A more extensive analysis of the humanitarian situation in FRY would be superfluous considering that the Special Rapporteur has already in his Report qualified it as "tragic".

55. With regard to para 221 of the Report, on 25 September 1993 at around 05.00 o'clock in the village of Tudjemile, Bar municipality, there was a blast on the minaret of the local mosque. The investigation undertaken by the examining judge of the District Court of Bar with the participation of the Ministry of the Interior of the Republic of Montenegro, revealed that an explosive device had been planted in the minaret and that the blast had caused considerable damage.

The above event was reported by the mass media the same day. Certain political parties and groupings also reacted to the event in the media.

With a view to shedding more light on this event, the Ministry of the Interior of the Republic of Montenegro took a wide range of operational-tactical and technical steps which produced good results. On 18 October 1993 the perpetrators were found and identified. They are Zdenko Brajović and Ljutica Bogdan, both residents of Bar. Ljutica was found and arrested, whereas Brajović is on the run. Measures are being taken to track him down and arrest him. Ljutica Bogdan, who stands accused of a "serious offense against public safety" as set out in Article 183 and in connection with the criminal offense specified in Article 176 of the Criminal Code of the Republic of Montenegro, was brought before the competent examining judge, following charges filed to that effect, and the latter, after interrogating the suspect who admitted having committed the said criminal offense, ordered detention.

The activities conducted so far indicate that this criminal offense was motivated by national intolerance. The proceedings before the competent authorities are underway.

As evident from the above account and the measures taken, the Rapporteur's statement that the perpetrators had not been found is only partly true. Namely,of the two perpetrators, one (Z. Brajović) has still not been apprehended. It is also clear that he has been identified as one of the perpetrators of the said criminal offense, which is the first and main prerequisite for finding and arresting him.

f) Comments on the Concluding Observations of the Report relating to FR Yugoslavia:

56. A great deal has already been said in connection with para 237 in these Comments on the Report. At this point we wish to draw attention to the fact that it is precisely the world media that have tendentiously portrayed the Serbs to the international public in the worst possible light, frequently on the basis of fraudulent and imputed evidence. Time has shown and numerous public figures have confirmed (Lord David Owen, General McKenzie, General Briquemont and others) that the image that has persistently been created of the Serbs is false. Special attention needs to be devoted to the presentation of objective and truthful information to the world media regarding the events in the former SFR Yugoslavia.

57. In regard to para 238, the Federal Government has repeatedly explained its position on the CSCE missions in FRY. The Federal Government is willing to cooperate with these Missions, on condition that the equitable participation and treatment of the Federal Republic of Yugoslavia in the work of this international organization is ensured.

58. In connection with para 239, we stress once again that appropriate steps have already been taken for amending the relevant law.

59. In relation to para 240 we wish to underline that in this area too measures have been taken for addressing the existing problems. However, the large number of refugees already in FRY with more arriving daily makes the resolution of this problem quite difficult.

60. In connection with para 241 we reaffirm that there are no persons arrested for political reasons in FR Yugoslavia. There are those who have been arrested for familiar criminal offences or acts directed against the territorial integrity and sovereignty of FR Yugoslavia. Verbal offence has been deleted from the Penal Code of Yugoslavia as well as from the Penal Codes of the Republics of Serbia and Montenegro.

61. In connection with para 242 we maintain that what is at stake is not any infringement of the right to education, political and trade union organization but the prevention of illegal activities directed at undermining the social and political system.

62. In regard to para 243 we recall that the Government of the Republic of Serbia has expressed its readiness to comply with the requests of students-members of the Albanian minority in Kosovo and Metohija who attended illegal schools and to recognize the years of study spent in illegal schools, but the representatives of the Albanian national minority rejected the offer since they did not wish to accept diplomas and certificates issues by the competent authorities of the Republic of Serbia, but rather insisted that such documents be issued by the illegal authorities of the so-called "Republic of Kosovo". This is absolutely unacceptable to the Republic of Serbia and FR Yugoslavia since it would mean a de facto recognition of the existence of a new state entity on its own sovereign territory.

63. Commenting on para 244, we appeal that the UN Sanctions Committee be urged to take appropriate steps so that the procedure for the approval of humanitarian aid be simplified as much as possible. We likewise appeal on the UN Special Rapporteur for Human Rights to intervene to the same effect with the governments of the neighbouring countries and other relevant international factors in order that the humanitarian situation in FR Yugoslavia be raised to a tolerable level and brought in line with relevant international legal documents.

64. The allegations and qualifications contained in the Report, in paras. 190, 191, 194, 207, 209, 210, 211, 213, 214, 215 are not substantiated by evidence, but are generalizations without naming the perpetrators or places where the alleged events took place.

g) The situation in former Bosnia and Herzegovina:

ga) Mostar

65. Regardless of the fact that the Special Rapporteur's mission began its work in August 1992, it is not possible to report on the events in Mostar and at the same time to ignore and not mention at all the happenings in the Neretva River valley when approximately 45,000 Serbs were banished from their homes, when all Serb sacral building and monasteries in that area were destroyed, the Cathedral in Mostar shelled and burned down (June, 1992), the Memorial Ossuary in Prebilovci blown up (July, 1992) etc.[1]

66. All the statements of the Special Rapporteur to that effect are reduced to the observation that the Neretva River valley south of Mostar was predominantly inhabited by Croats (para 51) as well as that the Serbs had to the main part left Mostar at the beginning of the war. (8/IV).

67. Without insisting on a historical point of view which is certainly not alien to either the empirical or theoretical approach of European provenance, we only wish to observe that the Serbs represented an indigenous population in the Neretva valley ever since Byzantine times, that Mostar became part of the Croatian Banovina (Princedom) for the first time in 1939 (the root of Croatian secession)[2], that Mostar was a symbol of Serb culture from the time of the Austria-Hungarian empire, etc. (in 1939 the Serbs accounted for 1/3 of the total population).[3]

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1 In the Zahumlje-Herzegovina Eparchy alone, in addition to the mentioned Cathedral in Mostar and Memorial Ossuary of the victims of Ustashi crimes during II World War in Prebilovci, 24 churches have been destroyed and 16 badly damaged. The Žitomisli Monastery has been demolished while the fate of the Zavale Monastery is unknown. Likewise, two parish houses, the Eparchial Residence in Mostar and the Bishop's Residence in Dubrovnik. Numerous graveyards have also been destroyed and desecrated.

2 The Croatian Banovina (Princedom), resulted from a political compromise in 1939 and represented a revision of the hitherto state order of the Kingdom of Yugoslavia. It included the Sava and Primorje regions and parts of the Vrbas and Zeta regions, as well as the counties of Travnik, Fojnica, Derventa and the city and county of Dubrovnik, etc. Contrary to the competences of the other Princedoms, a number of competences of the central authorities were transferred to the Croatian banovina, including legislative competences.

3 It is a known fact that in the course of 1941 the Ustashi authorities brutally killed more than 1,200 Serbs from Mostar. The others were expelled and they resettled. Only 850 Serb inhabitants remained in Mostar. In addition

We encounter the same methods of reporting in connection with the events that took place in the Medak Pocket.

In spite of the exceptional efforts exerted by the Special Rapporteur to unravel the crime and identify those responsible for its execution (letters to F. Tudjman), it is quite certain that the war and the suffering of the Serb population did not begin with this crime. Nowhere, at absolutely no point in the reports of the Special Rapporteur can any idea of the proportions of ethnic cleansing suffered by the Serbs in Croatia be obtained. Likewise, the Special Rapporteur undertook nothing to reveal and disclose the truth about the Pakrac mass graves, although, one of them had been dislocated by the Croatian authorities and all traces of the crime destroyed on May 14, 1993, in other words, at the time Mr. T. Mazowiecki's mission in Zagreb had already begun work.

gb) Sarajevo:

68. In connection with the reporting on Sarajevo, we have to point out that no matter how hard we tried we could not find any adequate explanation for how during his visit to that city the Special Rapporteur failed to observe the following:

- that all public buildings and facilities including hospitals, faculties, institutes, schools, etc. have become the strongholds of the Muslim forces and that as such, they have been exposed to attacks by Serb forces;

- that the population of the city have been starving to a large extent also because the small quantities of humanitarian aid that reach Sarajevo are first used for military purposes, then for bribes and black-marketeering and only after that distributed to the citizens;

- that thousands of Serbs have been beaten and killed in Sarajevo prisons;

- that the tragedy of Sarajevo is to a large extent, and we would say, primarily the result of the Muslim strategy of "active defense" which by making martyrs out of the citizens of this city seeks to achieve its political goals.

And, finally, we wish to point out that some of the statements of the Special Rapporteur are quite generalized, lacking detail and insufficiently substantiated making it relatively difficult to authenticate many of them and therefore give more precise explanations and answers.

h) The situation in Croatia outside the territories under UN control:

ha) The citizenship issue:

69. In Croatia the problem has arisen of persons who used to have Croatian citizenship - they resided for many years in that republic but precisely because they were Serbs or else belonged to the category of those from ethnically mixed marriages or were Yugoslavs - have not acquired citizenship. The legal basis, as the Special Rapporteur himself emphasized in his Fourth Report of February 26, 1993, was provided by the new citizenship law: "The Ministry of Internal Affairs may reject the request for admission ... into Croatian citizenship even in cases when conditions stipulated for the acquisition of citizenship have been fulfilled if that is considered to be in the national interest ...". According to para 2 of this article the decision to that effect does not even have to be explained. The centuries-long Catholic proselytism has also played a role in this respect. A large number of children has been converted again (baptised). Grown-ups, on the other hand, changed their names in order to conceal their origins[1], a column headed "nationality" has been added in students' report cards, etc.

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in 1946 and 1947 the region of Eastern Herzegovina, populated mainly by Serbs was the scene of a massive exodus and resettlement of the Serb population, mostly to Vojvodina which considerably reduced the share of Serbs in the economy and public services of Mostar.

1 In Zagreb, for instance, several thousand people, mainly of Serb nationality, changed their namesand surnames (480 persons in the commune of Centar alone), about 1,600 in Rijeka, 1,130 in Split, over 660 in Zadar, 250 in Dubrovnik, etc